

September 18, 2001

D.T.E. 99-AD-5

Adjudicatory hearing in the matter of the complaint of Dorothy Carroll protesting rates and charges for electricity provided by Commonwealth Electric Company.

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APPEARANCES: Dorothy Carroll  
39 Tower Hill Road, Unit 5C  
Osterville, Massachusetts 02566  
PRO SE  
Complainant

John Cope-Flanagan, Esq.  
NSTAR Service Company  
800 Boylston St.  
17<sup>th</sup> Floor  
Boston, Massachusetts 02199  
FOR: COMMONWEALTH ELECTRIC COMPANY  
Respondent

## I. INTRODUCTION

On March 19, 1999, the Consumer Division of the Department of Telecommunications and Energy (“Department”) held an informal hearing on the complaint of Dorothy Carroll (“Complainant”) relative to Commonwealth Electric Company’s (“Company or Respondent”) rates and charges for electricity. The Complainant was not satisfied with Consumer Division’s decision and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The Department docketed this matter D.T.E. 99-AD-5.

Pursuant to notice duly issued, the Department held a hearing on December 14, 2000, at the Department’s offices in Boston, in conformance with the Department’s Regulations on Billing and Termination Procedures, 220 C. M. R. §§ 25.00 et. seq. The Complainant testified on her own behalf. The Respondent sponsored the testimony of Margaret Coughlan, manager of regulatory relations for the Company. The evidentiary record consists of five exhibits and two Company responses to record requests.<sup>1</sup>

## II. SUMMARY OF ISSUES

The Complainant argues that the Company violated the Department’s standards when the Company did not bill her at the most advantageous rate, i.e., the electric heat rate. The Complainant alleges that the Company did not inquire about her rate needs when she applied for service and commenced service on her account without telling her the rate information. The Complainant also argues that the Company failed to provide reasonable notices that informed the Complainant that the Company was billing her at the non-electric heat rate.

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<sup>1</sup> The Company responded to the record requests on January 18, 2001.

The Company argues that the Complainant waived the electric heat rate when she signed her application card for the non-heat rate for electric service in 1977. Despite this waiver, the Company claims it continued to notify the Complainant to check her rate and call with any questions regarding it. The Company further argues that these notices were in compliance with the Department's standards since the Company's notices were reasonable and informative as to the customer's rate information.

### III. SUMMARY OF FACTS

#### A. The Complainant

The Complainant stated that she resides at 39 Tower Hill Road, Unit 5C, Osterville, Massachusetts (Tr. at 4). The Complainant asserted that she transferred electric service when she purchased her condominium unit in January 1977 (Tr. at 40-41). The Complainant further stated that her condominium uses electric heat (Tr. at 7).

According to the Complainant, she called the Company in March 1998 to complain about an unusually high bill she received after her return from a six-week vacation (Tr. at 6). She testified that the Company's representative informed her that she was on the non-electric heat rate (id.). The Complainant further testified that she had complained to the Company in the past and believes that the Company should have detected this error sooner (id.).<sup>2</sup>

The Complainant insisted that it never occurred to her to check her rate because she did not know the difference between an electric heat and non-electric heat rate (id.). The Complainant argued that since she did not know she was on the wrong rate, it would be

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<sup>2</sup> The Complainant did not have documentation of these calls.

illogical for her to think that there was something wrong with her rate (Tr. at 37). The Complainant asserted that the Company should compensate her for its mistake by recalculating all of her electric bills using the electric heat rate from the inception of her service at her condominium unit and credit her account with any overpayments she may have made (Tr. at 6). The Complainant stated that the Company did voluntarily credit the amount of \$500 to her account, which she thought was insufficient (Tr. at 7).

B. The Company

The Company provided a billing history for 39 Tower Hill Road, Unit 5C, Osterville, Massachusetts (Tr. at 17). The Company stated that the Complainant became a customer on January 3, 1977 (id.).<sup>3</sup>

The Company explained that, in 1977, it required customers to apply for service either in person or by telephone (Tr. at 18). The Company stated that the non-electric heat code appears on the Complainant's signed service application (Exh. CE-1). The Company's records indicate that, on January 3, 1977, a Company representative noted on the Company's "On Line Order Log" in reference to the Complainant's application: "card signed does not want heat rate" (Exh. CE-2).

The Company testified that it provided rate information on customer bills from the 1970s until 1994 (Tr. at 21). The Company's numerical billing code was printed on the front of the bill with an explanation of the code printed on the back of the bill (RR-DTE-1A). In addition, the Company testified that it provided an annual bill message that stated: "Please

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<sup>3</sup> The previous occupant of Unit 5C was on the electric heat rate (Exh. CE-2; Tr. at 7).

check if billing name and address [are] correct on this bill. This account is currently being billed on a residential non-heating rate. If you have questions, please call us at. . . .” (Exh. CE-3).

Furthermore, the Company stated that it also placed bill inserts, as needed, into a customer’s monthly billing statement whenever there was a rate change (Tr. at 26). The Respondent stated that on the first billing insert, sent in July 1991, the relevant rate information was located on the second page of the bill insert (Exh. CE-4; Tr. at 26). According to the Company, for the second bill insert, dated August/September 1991, the relevant rate information was on the first page of the notice (Exh. CE-4; Tr. at 27). The Company stated that the last two billing inserts, February 1992 and July 1992, merely listed the rate information (id.). The Company explained that since 1994, it has printed the rate code and an explanation of the code on customers’ monthly bills so billing messages and bill inserts are no longer necessary (RR-DTE-1B).

The Company argues that the Complainant shared with the Company the responsibility of ensuring that the Company charged her the most advantageous rate, the electric heat rate. The Company explained that it is the Complainant’s responsibility to notify the Company about any concerns with her rate (Tr. at 31). The Company stated that the notices it sent satisfy the Department’s standards (id.). The Company also stated that it had no record of the Complainant’s billing complaints prior to March 1998 (id.).

After the Complainant contacted the Company, the Company reported that it placed the Complainant’s account on the electric heat rate and adjusted her account by the amount of \$534.34 for the period from December 19, 1994, the date the Company sent its last annual rate

message to the Complainant, to March 24, 1998, the date the Company changed her account to an electric heat rate (Exh. CE-5; Tr. at 31).

## VI. STANDARD OF REVIEW

The Department has held that the company has the responsibility to ensure that the customer is billed at the most advantageous rate. Lobello v. Commonwealth Electric Company, D.P.U. 84-86-52 (1986); Boston Gas Company v. Setti, D.P.U. 1484 (1983); Copelas v. Massachusetts Electric Company, D.P.U. 19040 (1978); see 220 C.M.R. § 25.02(9). The Department has adjudicated that the company is in a better position than the customer to inquire about and determine the most advantageous rate. Cambridge Electric Light Company, D.P.U. 843 (1982); see Copelas, D.P.U. 19040. The Company can satisfy this burden to determine the best rate either by asking the customer questions when the customer requested service or by sending a notice to the customer regarding rate options after the company instituted service. Lobello, D.P.U. 84-86-52, at 4; 220 C.M.R. § 25.02(9). If the Company sends the customer notice of rate options, and the customer overlooks or chooses to ignore the information, the customer is responsible for being billed at a less advantageous rate. Lobello, D.P.U. 84-86-52, at 4. This notice must provide reasonable notice to the Complainant that she was billed at the wrong rate. Brown v. Western Massachusetts Electric Company, D.P.U. 93-AD-25-14 (1995).

## V. ANALYSIS AND FINDINGS

### A. Introduction

The Department's standard of review requires a two-step analysis. First, the Department must determine whether the Company has presented evidence sufficient to support

a conclusion that the Company did not breach its duty to charge the Complainant at the most advantageous rate. Cambridge Electric Light Company, D.P.U. 843. The Company can demonstrate this either by showing that it asked the Complainant questions when she registered for service or by demonstrating that it sent reasonable notices to the Complainant concerning her rate information. Lobello, D.P.U. 84-86-52. Second, the Department must determine whether the Complainant can rebut the Company's presentation with evidence that demonstrates the Company did not appropriately inquire about her service or send out reasonable notices.

Brown v. Western Massachusetts Electric Company, D.P.U. 93-AD-25-14.

For the reasons discussed below, we determine that the Company has made the requisite showing, and that the Complainant has failed to rebut that showing.

B. Waiver of Non-Heat Rate in Service Agreement

The Complainant stated that she never entered a service center to register for service at 39 Tower Hill Road, Unit 5C (Tr. at 40, 41). She claimed that she transferred her electric service when she closed on the sale of the condominium (id.). The Company testified that there were only two methods of switching and requesting service during the 1970s: either by phone or in person at a service center (Tr. at 18). In support of its testimony, the Company offered as evidence the Complainant's signed service application (Exh. CE-1). There was a notation on the service application indicating that the Complainant applied in a service center (id.). A second code appeared on the application signifying that the Complainant had chosen the non-electric heat rate (id.). The Department finds the Company's testimony on this issue more reliable because of the Company's evidence, specifically Exhibit CE-1, the Complainant's service application.

C. Company Notices

The Complainant also argues that the Company's notices did not satisfy the Department's standards since the notices are not reasonable and informative as to her rate (Tr. at 36, 37). The Complainant questions how informative the notices are since the notices do not provide customers their actual rate information; the Complainant characterizes the notices as merely alerting the customer to check the rate and acknowledge that the present rate is the desired rate (Tr. at 37). Because, in her estimation, an average customer would not know the difference between an electric heat rate and a non-electric heat rate, the Complainant argues that the notices are not adequate (Tr. at 36).

The Company submitted a billing statement and bill inserts to illustrate the reasonableness of the notices (Exh. CE-3; Exh. CE-4). The Company asserts that the notices are reasonable and informative as to rate information because each notice identifies the types of rates the customer could be on and indicates that the customer should call if there are any questions about the rates (Tr. at 41). The Company also argues that customers are not absolved from the responsibility of knowing their rate information and questioning their Company about their rate (Tr. at 37).

We find that the billing message is designed to reasonably inform the customers of the different rates available and invites customers to question the Company about the different rates (Exh. CE-3). Through the billing message on the billing statement, the Company asks its customers to do three things: (1) check the name and address and make sure they are correct; (2) check the rate; (3) call a toll-free number if they have any questions (id.). This message is

reasonable and informative because it gives the pertinent information to the customer and allows them the opportunity to inquire about this information.

The Department also finds that the bill inserts reasonably explain the required rate information. The notices explain that there are different rates and customers are encouraged to call the Company with questions (Exh. CE-4). This is a reasonable and informative notice since it states the differences in the rates and allows the customers to question the Company about the changes and the rate information (id.).

The Department finds that the Complainant was given enough information to question the Company about her rate (See Exh. CE-3; Exh. CE-4). The Department finds that the Company's notices did not contribute to the Complainant's failure to realize she was being charged at the higher rate. Accordingly, the Department finds that the Complainant is not entitled to a credit to her account from the commencement of her service to the date when the Company voluntarily credited her account.<sup>4</sup>

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<sup>4</sup> The Department will not address the post-1994 notices since the Company voluntarily refunded the differences in rates.

VI. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That the relief sought in the complaint of Dorothy Carroll with respect to rates and charges for electricity Commonwealth Electric Company sold is denied.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeals as to matter of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such a petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such a petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).